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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1962

No. 182

KERR'S CATERING SERVICE, a corporation,
Petitioner,

vs.

THE DEPARTMENT OF INDUSTRIAL RELATIONS OF THE STATE OF CALIFORNIA; THE DIVISION OF INDUSTRIAL WELFARE OF THE STATE OF CALIFORNIA; JOHN F. HENNING, Director of the Department of Industrial Relations of the State of California; FLORENCE G. CLIFTON, Chief of the Division of Industrial Welfare of the State of California; JOHN W. QUIMBY, VIRGINIA ALLEE, DANIEL E. KOSHLAND, FRANCES LARSEN, and MAE STONEMAN, in their capacity as The Industrial Welfare Commission of the State of California,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
to the Supreme Court of the State of California

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PETITION FOR A WRIT OF CERTIORARI
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State of California

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the

State of California, first entered in the above-entitled case on February 19, 1962.

CITATIONS TO OPINIONS BELOW

The original opinion of the California Supreme Court is reported at 57 A.C. 347, and is not yet reported in a bound volume. That opinion is set forth in the Appendix hereto. The original opinion was modified, but the modification is not reported, and is printed in the Appendix hereto. The opinion of the California District Court of Appeal is reported in 193 A.C.A. 464, but is not reported in a bound volume, and it is printed in the Appendix also.

JURISDICTION

The judgment of the Supreme Court of California was entered on February 19, 1962. A timely petition for rehearing was filed on March 2, 1962. Rehearing was denied on March 21, 1962, but there was issued on that date a modification of opinion, which modified the previous opinion in certain respects. The jurisdiction of this court is invoked under 28 U.S.C. 1257(3).

This case originally arose by means of a Complaint for Injunction and Declaratory Relief, filed by the plaintiff, petitioner herein. (C.T. 1.)[1] In that original

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[1]In this petition, the Clerk's Transcript is referred to as C.T., and the Reporter's Transcript is referred to as R.T. Page reference follows.

complaint, petitioner alleged that the administrative order here under attack violated "Section 10, Art. 1, of the Constitution of the United States of America and the Fourteenth Amendment to the Constitution of the United States of America; and that said order is illegal, unconstitutional, and without force of law insofar as it attempts to deprive plaintiff of its contractual right to deduct shortages from commissions paid to its female employees". (C.T. 4.) In the trial court, the minute order judgment held the administrative regulation "unconstitutional and void insofar as it was intended to apply, or is held by said Commission to apply, to 'the wages of an employee' in excess of the minimum wage set forth in section 4 of said Order. . . ." (C.T. 73.) The District Court of Appeal of California and the Supreme Court of California, in its original opinion, did not discuss the constitutional issues; but on petition for rehearing, the Supreme Court Opinion was modified to state that "It necessarily follows that the legislation now before us does no violence to constitutional due process or equal protection of the law". (Appendix C, page 44.)

QUESTIONS PRESENTED

1. Does an administrative regulation which deprives an employer of the right to contract, by means of collective bargaining, to deduct shortages from a negligent employee's wages over and above a minimum wage provided by state law, deprive that employer of property without due process of law?

2. Does an administrative regulation which deprives and employer of the right to contract, by means of collective bargaining, to deduct shortages from a negligent employee's wages over and above a minimum wage provided by state law, deprive that employer of equal protection of the law?

3. Is the power vested in an administrative official to issue a regulation which deprives an employer of the right to contract to deduct shortages from a negligent employee's wages, so long as said deductions do not invade the minimum wage provided by law, an unconstitutional delegation of legislative power to the executive?

STATUTE AND ADMINISTRATIVE REGULATIONS INVOLVED

The statute involved is Section 1182 of the Labor Code of the State of California. It reads as follows:

> "1182. Fixing wages, hours and standard conditions of labor: Order: Promulgation and publication. After the wage board conference and public hearing, as provided in this chapter, the commission may, upon its own motion or upon petition, fix:
>
> (a) A minimum wage to be paid to women and minors engaged in any occupation, trade, or industry in this State, which shall not be less than a wage adequate to supply the necessary costs of proper living to, and maintain the health and welfare of such women and minors.
>
> (b) The maximum hours of work consistent with the health and welfare of women and minors engaged in any occupation, trade, or industry in

this State. The hours so fixed shall not be more than the maximum now or hereafter fixed by law.

(c) The standard conditions of labor demanded by the health and welfare of the women and minors engaged in any occupation, trade, or industry in this State.

The commission may thereupon make a mandatory order to be effective on a date fixed by the commission, which date shall not be less than sixty (60) nor more than ninety (90) days from the publication thereof, specifying the minimum wage, the maximum hours, and the standard conditions of labor for women or minors in the occupation, trade, or industry in question. The hours specified shall not be more than the maximum for women or minors in California. Such order shall be published in at least one newspaper in each of the cities of Los Angeles, Sacramento, Oakland, San Jose, Fresno, San Diego, and San Francisco."

The administrative regulation involved is Section 8 of Order No. 5-57 promulgated by the Industrial Welfare Commission of the Division of Industrial Welfare of the State of California, Department of Industrial Relations. It reads as follows:

"8. No employer shall make any deduction from the wage of an employee for any cash shortage, breakage, or loss of equipment, notwithstanding any contract or arrangement to the contrary, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or wilful act, or by the culpable negligence of the employee."

STATEMENT OF THE CASE

Petitioner maintains a fleet of trucks driven by women salesgirls who purvey food and drink to employees of industrial plants at meal and break times. Pursuant to collective bargaining agreement, these girls receive a basic wage in excess of the minimum wage required by the Division of Industrial Welfare of the State of California. In addition, these girls receive a 15% commission on all sales over a quota figure of $475.00 per week. Each day each girl receives a truck full of merchandise and a small amount of cash for change purposes. At the end of the day, each girl accounts for her returned inventory and her cash. The total of the cash and the retail value of the remaining merchandise at the end of the day should equal the value of merchandise and cash entrusted to each girl at the beginning of the day. Very often there is an overage or shortage. Pursuant to collective bargaining agreement, effected with a local Teamster's Union, after a three-month break-in period, these overages and shortages are totaled on a monthly basis. If there is a net shortage for a particular route, it is subtracted from the commissions earned by the employee working that route.

The Division of Industrial Welfare of the California Department of Industrial Relations promulgated Order No. 5-52 in 1952, and Section 8 thereof read as follows:

> "8. No employer shall make any deduction from the minimum wage of an employee for any cash shortage, breakage, or loss of equipment,

notwithstanding any contract or arrangement to the contrary, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or wilful act, or by the culpable negligence of the employee."

Then in 1957 the Division of Industrial Welfare replaced Order No. 5-52 with Order No. 5-57, and Section 8 thereof read the same as Section 8 of Order No. 5-52, save that the word "minimum" was stricken from this last order.

In 1959 the Division of Industrial Welfare discovered the petitioner's method of operation as outlined above and informed petitioner the deduction was unlawful. The petitioner administratively appealed from the ruling on the ground that the shortages were caused by the culpable negligence of the driver-salesgirls. After administrative hearing, it was determined that there was no culpable negligence involved. (C.T. 36.)

Petitioner brought suit for injunction and declaratory relief against the respondents herein, alleging the existence of a dispute concerning the validity of Section 8 of Order No. 5-57. Petitioner did not dispute the administrative determination that its employees were free of culpable negligence. Petitioner did contend that its employees were guilty of simple negligence. (R.T. 3, 4.) At trial level both sides filed motions for summary judgment. (C.T. 15, 69.) The facts as outlined above were not disputed. (R.T. 3, 4.) Based upon these facts, the trial court gave summary judgment for the petitioner. Summary judgment was

by means of a Minute Order that held that the Industrial Welfare Commission of the Division of Industrial Welfare had no power to issue the administrative order, and the trial judge also declared such order to be unconstitutional, but did not specify the exact grounds of unconstitutionality. (C.T. 73, 74.)

The Division of Industrial Welfare appealed to the District Court of Appeal of the State of California, First Appellate District, Division One. In a two to one decision, the District Court of Appeal held that the Division of Industrial Welfare did not have the power to promulgate Section 8 of Order No. 5-57. Constitutional questions were not discussed. (Appendix A.) The Division of Industrial Welfare petitioned the California Supreme Court for a hearing, which was granted, and on February 19, 1962, the California Supreme Court unanimously reversed the lower courts and held the Industrial Welfare Commission had the power to promulgate Section 8. Constitutional issues were not discussed. (Appendix B.) Petitioner timely filed a petition for rehearing, which was denied on March 21, 1962, but at that time the opinion was modified to hold "that the legislation now before us does no violence to constitutional due process or equal protection of the law." (Appendix C, page 44.)

This petition for writ of certiorari then was decided upon.

REASONS FOR GRANTING THE WRIT

1. THE DECISION OF THE CALIFORNIA SUPREME COURT IS DIRECTLY IN CONFLICT WITH THE DECISION OF THE HIGHEST COURTS OF OTHER STATES UPON CONSTITUTIONAL ISSUES AND UNIFORMITY OF DECISION IS NEEDED TO GUIDE LEGISLATORS, ADMINISTRATORS, AND COLLECTIVE BARGAINERS IN ALL STATES.

The issue in this case is not the validity of legislation or administrative orders fixing a minimum wage. Petitioner has no quarrel with the constitutional principles which uphold minimum wage legislation. The issues here are the extent to which the state can invade the sphere above the minimum wage and the extent to which an individual can be deprived of his right to protect himself from the negligence of another.

The California Supreme Court is in direct conflict with the highest courts of Massachusetts, Wisconsin and Nebraska. In the case of *Commonwealth v. Perry* (1891), 155 Mass. 117, 28 N.E. 1126, the court had under consideration, and struck down, a statute which prohibited an employer from withholding wages from an employee where imperfections in the work product resulted from the negligence of the employee. The court stated that when a statute attempts to "compel payment under a contract of the price for good work, where only inferior work is done, a different question is presented. There are certain fundamental rights of every citizen which are recognized in the organic law of all our free American states. A statute which violates any of these rights is unconstitutional and void, even though the enactment of it is not expressly forbidden." *Commonwealth v. Perry* (1891), 155 Mass. 117, 121, 28 N.E. 1126, 1127. This case still

stands as a vital part of the judicial framework of Massachusetts. It was cited with approval in *Com. v. Lancaster Mills* (1912), 212 Mass. 315, 98 N.E. 864, and *Atty. Gen. v. Prudential Ins. Co. of America* (1942), 310 Mass. 762, 39 N.E. (2d) 664. In Wisconsin a statute provided for no deductions from wages until a representative of the employer together with the employee determined that the defective work was the result of the negligence of the employee. In *Zarnott v. Timpken-Detroit Axle Co.* (1944), 244 Wis. 596, 13 N.W.(2d) 53, this statute was held constitutional and the court expressly mentioned that the statute did not have the vice which caused the decision in *Commonwealth v. Perry.*

The Supreme Court of Nebraska apparently agrees with the petitioner. In *Philson v. City of Omaha* (1958), 167 Neb. 360, 93 N.W. (2d) 13, at page 16, the court stated, "There is a constitutional difference in a legislative act providing that a sum no less than the going wage for like labor shall be paid and one providing for a fixed sum, irrespective of going wages or the worth of the employee. The former is generally upheld as a proper fair labor standard. While the latter is held to . . . take the private property of the taxpayer without due process of law."

Petitioner cited the Massachusetts, Wisconsin and Nebraska cases before the California Supreme Court, and its citations were in vain. Unless certiorari be granted, future legislators, administrators, members of the bar, and people in all walks of economic life will be unable to ascertain the true state of the law

covering collective bargaining agreements as affected by administrative regulations and statutory pronouncements of this type. The laws of many other states are directed toward this same problem. Despite the idea that can be gained from the Opinion of the California Supreme Court, petitioner contends that, in addition to Massachusetts, Wisconsin and Nebraska, the states of Pennsylvania, Washington and Hawaii presently restrict deductions only where the minimum wage is endangered, and none require the employer to prove more than ordinary negligence on the part of an employee to justify a deduction. The laws of Oregon parallel those of California, but no case directly in point has been found in that jurisdiction. The administrative agencies and legislatures of these states as well as others throughout the United States will anxiously await a definitive sketch of their power and its reasonable exercise which can be provided by granting certiorari. Workers, employers, and their representatives engaged in collective bargaining everywhere will be aided by a United States Supreme Court decision laying to rest the inconsistency in legal opinion. In addition, the Industrial Welfare Commission of the State of California is presently drafting amended orders, and the Attorney General of California in his Petition For Hearing, addressed to the Supreme Court of California, pointed out that he would need guidance in providing counsel to the Commission in this respect. Here again, a granting of the writ will bring certainty to beleaguered state officials and worried employers, employees, and their collective bargaining representatives.

2. THE DECISION OF THE LOWER COURT REFLECTS A MISCARRIAGE OF JUSTICE AND AN EROSION OF THE LEGAL PRINCIPLES OF DUE PROCESS OF LAW THAT REQUIRES DEFINITIVE ACTION BY THE HIGHEST COURT OF THE LAND.

At the outset, petitioner wishes it made clear it realizes that both liberty and property are not absolute concepts and that the state may deprive the individual in these spheres if the deprivation be for the common good and the restrictions be not unreasonable and unnecessary. *Seattle Title Trust Co. v. Roberge* (1928), 278 U.S. 1116. That is why petitioner consistently admits the power of the state in the field of wage and hour legislation. The principle that is being eroded by the decision of the California Supreme Court is the basic principle that even the police power of the state can be exercised only to accomplish a legitimate end in a reasonable way. *West Coast Hotel Co. v. Parrish* (1937), 300 U.S. 379. This landmark decision in the field of minimum wage law took great pains to point out that a restraint of liberty, if reasonable in relation to its subject and if adopted to combat evils menacing health, safety, morals and welfare of the people, is due process. The basic premise of the court in upholding the legislation in that case was set forth in the decision at pages 398 and 399:

> "What can be closer to the public interest than the health of women and their protection from unscrupulous and overreaching employers? And if the protection of women is a legitimate end of the exercise of state power, how can it be said that the requirement of the payment of a minimum wage fairly fixed in order to meet the very

necessities of existence is not an admissible means to that end? The legislature of the State was clearly entitled to consider the situation of women in employment, the fact that they are in the class receiving the least pay, that their bargaining power is relatively weak, and that they are the ready victims of those who would take advantage of their necessitous circumstances. . . . The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and well being but casts a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. The bare cost of living must be met. We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved."

In the light of this language, the petitioner will admit that California can call for a living wage even without regard to the consideration, in terms of faithfulness and work effort, given by the employee for that wage. The pernicious effect of administrative order in the instant case is that it has no relation to a living wage and no legitimate end it is trying to reach. The minimum wage necessary to health and well being is guaranteed the employee. There is no uncertainty in the basic pay to be received. The evil device commented upon by the Supreme Court of the State of California never interferes with the neces-

sities of life. The evil device of deduction was not wrenched from an underprivileged worker in an unequal bargaining position, but was the considered concession of a strong labor union devoted to furthering the interests of the majority of its industrious and honest members. Of the evils in existence in 1937, how many are now present with the advent of minimum wage laws and powerful unions? Cannot the courts of this land take judicial notice of high standards of living, inflation, and labor unions which are in many cases as well or better organized, and as wealthy, or more so, than the employers of the employees those unions represent?

After the decision in this case it would appear that an employer now must sue his employee for negligence or discharge him. The further evil of the decision, however, is that a question remains whether the employer has a legal right to sue or a legal right to discharge, inasmuch as there would seem to be a public policy endorsing ordinary negligence when considering the actions of an employee while on the job.

Certainly due process considerations inhibit the State in fields other than those of race relations, crimes, and dealing with the Communistic threat. It is the function of the Supreme Court of the United States to help delineate the outer areas of State interference with legitimate subjects of collective bargaining in the field of labor relations. The number of employers having an intense interest in this case is large, not to mention the number of state administrative agencies and state legislators who will govern their

future actions according to any decision of the United States Supreme Court.

The fact that the only case directly in point occurred in Massachusetts in 1891 should not derogate against petitioner's request for a hearing. *Commonwealth v. Perry* (1891), 155 Mass. 117, 28 N.E. 1126. The fact that there was a dissent in that case should not be given undue weight. It is true that Justice Holmes, then in the highest Massachusetts Court, dissented in the *Perry* case. That dissent should be considered in its context of time and in the light of the progress in social development. The employee of that day did not bargain with the employer on an industry-wide basis. He did not have the economic backing of a labor organization which dwarfed many of the employers with whom it bargained. The negligence of an employee did not have the ramifications of large economic loss that are present with the ultra efficient employee run machines today. Justice Holmes was reluctant to quarrel with the direct voice of the legislature and was not dealing with an administrative extension of that legislative voice. The octopus-like arms of administrative agencies more and more are engulfing precious liberties of the individual. Petitioner realizes the California Supreme Court has put to rest the issue of whether the administrative agency has the power to issue the order in question. There still remains the question of reasonable exercise of that power which, it is submitted, can and should be examined in the light of the basically administrative source of the fetters here placed on individual free-

dom. This is true because constitutional questions often involve "conditions of time, place and circumstances". *Hartford Acc. & Indem. Co. v. N. O. Nelson Mfg. Co.* (1933), 291 U.S. 352, 361.

In the frame of reference of today's social progress, perhaps even Justice Holmes would reevaluate his dissent, especially in the light of administrative source of the power here exercised.

This case was fought on the basis of a stipulation that petitioner's employees are ordinarily negligent. (R.T. 3, 4.) The briefs on appeal make this clear. The decision of the District Court of Appeal makes this clear. Oral arguments before the lower courts enunciated this point. This was one of the main issues cited as a basis for a petition for rehearing addressed to the California Supreme Court. This stipulated set of facts overcomes any "dicta" in the letter of December 15, 1959 from the Division of Industrial Welfare to the petitioner in which it was stated "that employees working under such conditions cannot be held guilty of culpable negligence, or any negligence". (C.T. 36.) The fact is that the administrative hearings were aimed only at discovering whether the employees of the petitioner were culpably negligent, a term which means something more than ordinary negligence. (C.T. 37.) The decision of the California Supreme Court tells the petitioner, and countless others in a similar position, that he cannot collectively bargain to protect himself against the ordinary negligence of an employee. If this is not the taking of property without due process of law, where does the

power of the state, or more properly the power of administrative officials, end?

It has been judicially stated that there is an implied condition in every contract of employment, whether or not in writing, that the employee is bound to serve his employer faithfully and honestly. *Blackshear Mfg. Co. v. Umatilla Fruit Co.* (1931) (C.A. 5), 48 F.2d 174. This implied condition is now stricken in California and every other state that presently follows or will follow California, in the absence of a definitive expression by the United States Supreme Court.

Petitioner would never challenge a proper administrative finding that its employees were free of negligence because it thus would be given its every right under the law. It is the devastating effect of a state, through its administrative agency, exercising its power to deprive the petitioner of "a day in court" that leaves petitioner saddened and bewildered. If the Supreme Court of the United States does not grant a hearing, there will be many another individual in the United States similarly saddened and bewildered. What is even more surprising, petitioner in this case has been deprived of his entire theory of the case, from its first inception in court, in that the California Supreme Court seems to ignore the stipulated fact that the employees of the petitioner are ordinarily negligent. (See Concurring Opinion.)

In passing, petitioner wishes to note that while Workmen's Compensation laws may make an employer liable for the negligence of his employee, the benefits to society from such legislation are enormous

and the state provides other machinery that aids in reducing the cost to the employer.

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3. THE DECISION OF THE LOWER COURT REFLECTS A MISCARRIAGE OF JUSTICE AND AN EROSION OF THE LEGAL PRINCIPLES OF EQUAL PROTECTION OF THE LAW THAT REQUIRES DEFINITIVE ACTION BY THE HIGHEST COURT OF THE LAND.

The cases which permit an employee to recover for the negligence of an employer are legion. *A fortiori* it can be stated that a collective bargaining agreement could deal with the subject of an employer's duty to compensate an employee for property damage. In the instant case, if the employee was required to use his own money as change and the money was lost through the negligence of the employer, a collective bargaining agreement could be demanded by the union of the employee to cover such loss. Petitioner knows of no statute or regulation in California which would deprive the union of insisting on this collective bargaining contract provision. Yet the law which protects this right of the working man and his union deprives the petitioner and other employers of a similar right. To classify in a separate category the worker of forty years ago bargaining alone against his employer, the discrimination of the legislature and administrative officials might have some validity; to distinguish between the powerful unions of today and the ordinary small businessman, such as petitioner, the discrimination in the particular respect of this case is ludicrous.

The petitioner will not dwell upon the further phenomenon that in California the negligence of women and children seems sacrosanct, but it is not clear that the negligence of men is given that same distinction, inasmuch as the administrative order in question is directed only at employers of women and minors.

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4. UNLESS THE SUPREME COURT OF THE UNITED STATES SPEAKS, A SUBSTANTIAL SEGMENT OF THE AMERICAN PUBLIC IS IN DANGER OF LOSING THEIR RIGHT TO HAVE THEIR ELECTED LEGISLATORS ENACT AND REPEAL LAWS.

The Civil Code of the State of California provides as follows:

"1714. Responsibility for willful acts, negligence, etc. Everyone is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the title on compensatory relief."

"3281. Person suffering detriment may recover damages. Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages."

"3543. Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer."

The legislature has thus created for the individual the right to be compensated for the negligence of another. Petitioner likes to think that the legislature was not merely giving each individual a right to bring a lawsuit, but was, in fact, giving endorsement to any legal means whereby one could obtain compensation for injury caused him by another. Petitioner contends that these rights insured him by these statutory enactments were taken from him by administrative action. The response immediately is evoked that since the power was given by the legislature to the Industrial Welfare Commission the argument is specious. It is at this point that petitioner feels his rights have been invaded, not only by administrative action, but also by the Opinion of the Supreme Court of California. As pointed out in the Statement of the Case, from at least 1952 to 1957, and probably before, administrative orders similar to Section 8 now under attack, prohibited deductions only from the *minimum* wage. As stated by the majority in the California District Court of Appeal, the long-standing administrative practice of the Commission indicated that it had power in this particular type of case only to protect the *minimum* wage. Then in 1957 the Industrial Welfare Commission arrogantly increased its power and struck the word "minimum" from Section 8 of Order No. 5-57. Despite these facts, the Supreme Court of California stated that a long-standing administrative construction should be adhered to and thus the power has always existed. How can this be? The prior administrative construction was that the

Industrial Welfare Commission only could make employers furnish equipment and uniforms, even if the minimum wage was not affected, because it had power under Section 1182(c) of the Labor Code to fix the standard conditions of labor. In essence, equipment and uniforms were considered to be a part of the conditions of labor. The power to fix the standard conditions of labor now is administratively extended, and judicially blessed, to invade the field of wages only. Why, then, did the Legislature enact 1182(a) and 1182(b) of the California Labor Code? Is there not here delegated power which "is not canalized within banks that keep it from overflowing"; in this case Section 1182(c) of the California Labor Code "is a roving commission to inquire into evils and upon discovery correct them". *Schechter Corp. v. U. S.* (1935), 295 U.S. 495, 557. Petitioner contends that the Legislature did attempt to delegate power by confining the power delegated to a class or group of acts properly identified and described by reference to a standard. In the field of wages, minimum wages were the subject of delegated power; in the field of hours, maximum hours; in other spheres of the employment relation, the standard conditions of labor were the subject of delegated power. In actual practice, the administrators have left these areas behind and the California Supreme Court has given judicial sanction to this usurpation of power. The decision of the California Supreme Court forever silences any criticism of the source of power. The power is there in anything touching standard conditions of labor, and

standard conditions of labor encompass the entire field of both wages and hours despite the attempted restrictions of Sections 1182(a) and 1182(b) of the California Labor Code. The only question for future litigants is whether the power is reasonably exercised. Petitioner cannot believe that this unlimited "roving commission" is the power the Legislature meant to delegate or the power constitutional guarantees permit to be delegated.

CONCLUSION.

Because of the uncertain state of the law in the areas encompassing the legal questions here involved, a writ of certiorari should be granted in accordance with the prayer of this petition.

Dated, San Leandro, California,
June 14, 1962.

Respectfully submitted,

ROBERT E. HANNON,
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ARTHUR L. PRETZER,
Of Counsel.

(Appendices A, B and C Follow)